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OFFICE OF PETITIONS

In re Application of :
Holmes et al. :
Application No. 09/754,592 :
Filed: January 5, 2001 :
Attorney Docket No. 9D-HR-19412 :

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed May 20, 2002, to withdraw the holding of abandonment. This is a decision on the alternative petition under 37 C.F.R. § 1.137(b), filed May 20, 2002, to revive the above-identified application.

The petition under 37 CFR 1.181 is **dismissed**.

The petition under 37 CFR 1.137(b) is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed February 21, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 22, 2001.

In order for the holding of abandonment to be withdrawn, petitioner must establish that the Notice was not received at General Electric Company, which was located at the correspondence address of records when the Notice was mailed. If the Notice was lost or misplaced after being received at General Electric Company or during a transfer of the file, then withdrawal of the holding of abandonment is improper.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:

- (1) include a statement from practitioner stating that the Office action was not received,
- (2) attest that a search of the file jacket has been made,
- (3) attest that a search of all relevant docket records has been made,
- (4) include a copy of the docket record where the Office action would have been entered had it been received, and
- (5) include any additional information which may be required by the Commissioner.

See MPEP 711.03(c)(II).

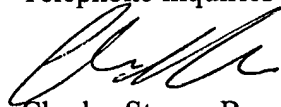
As to (1), a statement from General Electric has not been supplied. The issue is not whether the current law firm received the Notice, but is whether General Electric ever received the Notice. A statement from General Electric is essential evidence.

As to (3) and (4), the record fails to address whether or not General Electric maintains docket records or a mail log. The record fails to state whether or not all docket records or mail logs maintained by General Electric have been examined. The record fails to supply a copy of such documentation.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy